

## THE MARRIAGE INSTITUTION

411

and are completed by *concubitus*. Agreement to cohabit, followed by cohabitation, constituted marriage by the canon law. This is the common sense of the case. It was the doctrine of the canon law and is the widest modern civilized view.

432. Mediaeval marriage. In the thirteenth century began the astonishing movement by which the church remodeled all the ideas and institutions of the age, and integrated all social interests into a system of which it made itself the center and controlling authority. The controlling tendency in the mores of the age was religiosity, — a desire to construe all social relations from the church standpoint and to set all interests in a religious light. Marriage fell under this influence. The priests displaced the earlier prolocutors, and strove to make marriage an ecclesiastical function and their own share in it essential, although they did not make the validity of marriage depend on their share in it.<sup>1</sup> In different places and amongst different classes the custom of church marriage was introduced at earlier or later times, and the doctrine of priestly function in connection with marriage became established with greater or less precision. Friedberg<sup>2</sup> considers the ordinance of the Synod of Westminster<sup>3</sup> (1175) the first ordinance which distinctly prescribed church marriage in England, but from that to the establishment of a custom was a long way. Pollock and Maitland<sup>4</sup> think that marriage, in England, belonged to the ecclesiastical forum by the middle of the twelfth century. Rituals of Salisbury and York of the thirteenth century show the early church customs, only rendered more elaborate and more precise in detail.<sup>5</sup> There is also ritual provision

for an ecclesiastic to bless the bed of the spouses after they are in it, in order to drive away the evil spirits. In 1240, in the constitutions of Walter de Cantelupe, marriage is called a sacrament, because it prefigures the sacrament between Christ and the church. Marriage was to precede *concubitus*. There was to be no divination or use of devices for luck. By synodal statutes of 1246 it was ordered that priests should teach that betrothal and

<sup>1</sup> Friedberg, 98.  
365.

<sup>2</sup> *Ibid.*, 39.  
*Ecc.*

<sup>8</sup> Wilkins, *Concilia*, I, 478.

<sup>4</sup> *Hist. Eng. Law*, I, 109 ; II,

<sup>5</sup> Surtees Soc., *Man. et Pont.*

*Ebor.*, 157, and App. 17.